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June 26, 2018

Via email

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554
<http://apps.fcc.gov/ecfs/>

Re: Reply to Comments on CG Docket nos. 18-152 and 02-278

Dear Ms. Dortch:

I am submitting this Reply in response to Comments which were submitted by Senator Edward J. Markey (and dozens of others) regarding your May 14, 2018 Public Notice, "Consumer and Governmental Affairs Bureau Seeks Comment on Interpretation of the Telephone Consumer Protection Act in light of the D.C. Circuit's *ACA International* Decision," DA 18-493.

The Comments by Senator Markey and others advocate escalation of the FCC's legal warfare against auto-dialer-infrastructure, but all of the escalation-Comments ignore demonstrable historical facts: Predictive-auto-dialers which call known persons from lists were widely used before the TCPA was enacted in 1991, and if Congress intended to outlaw such systems and infrastructure, the TCPA would not mention random or sequential telephone numbers.

The FCC's war against predictive-auto-dialer-systems should not be escalated, it should be de-escalated. The TCPA did not authorize the FCC's war against such automated systems. To the contrary, when viewed in historical context, the TCPA (which was enacted in 1991) clearly delineated the technology which was outlawed: Auto-dialers which call random or sequential telephone numbers. The FCC knows that predictive-auto-dialers were beyond the scope of the TCPA: If such systems were regulated by the TCPA as enacted, the FCC's 2003 (and subsequent) Orders which expanded the definition of an Automatic Telephone Dialing System ("ATDS") to include such systems would be entirely unneeded and superfluous.

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The Commission should rescind its false claims and the ATDS-Orders which relied on those false claims, turn away from its dark past, and adopt new ATDS-Orders which recognize that the TCPA was never intended to encompass predictive-auto-dialer-systems which were widely used before the TCPA was enacted in 1991. (See June 13, 2018 Comments submitted by Charles R. Messer and, for example, the Arkansas Gazette RFP for a predictive auto-dialer (1988) at CRMAPP0160-0188).

Last, I well understand that the escalation-Comments urge the FCC to double-down on its false claims about post-enactment-changes-in-technology, and further expand the definition of an ATDS beyond any historically plausible definition. But escalated attacks on technology and infrastructure, if any, should be enacted by Congress, because they are wholly unauthorized by the TCPA.

Please let me know if you have any questions, comments, or concerns about my June 13, 2018 Comments and Appendix, or about this June 26, 2018 Reply. And many thanks for considering my submissions.

Very truly yours,



Charles R. Messer
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